

ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JEROME SMITH

:

Petitioner

:

CIVIL CASE No. 1:CV-01-1026

v.

:

(Judge Rambo)

(Mag. Judge Smyser)

UNITED STATES OF AMERICA

:

Defendant.

:

oOo

19
10/1/01
mg
FILED
HARRISBURG, PA

SEP 28 2001

MARY E. D'ANDREA, CLERK
For SJS
Deputy Clerk

**BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO
DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

I. Introduction

Plaintiff is Jerome Smith, an inmate currently incarcerated at the Allenwood Federal Prison Camp in Montgomery, Pennsylvania. On September 13, 2001, plaintiff received defendant's "Brief In Support of Defendant's Motion To Dismiss Or, In The Alternative, For Summary Judgment".

Plaintiff contends that the complaint against the defendant United States of America, should not be dismissed, and summary judgment should not be granted for the reasons stated herein:

Plaintiff request that the Honorable Court hold his pleading to less stringent standards than formal pleadings drafted by lawyers (citing Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L Ed. 2d 652.

II. History of the Case

On February 1, 2000, Smith filed a Tort Claim documented as "Tort Claim No. TRT-NER-2000-00454" seeking compensation for his pain and suffering of the aggravation of the fall in Unicor at the time he slipped and fell.

This Tort Claim was rejected by Mr. Henry J. Sadowski Esq., [Regional Counsel] for the Northeast Regional Office, citing claiming an injury while at work within [Unicor], is excluded from coverage under the Federal Tort Claims Act. Smith was informed that "the exclusive remedy for inmate accidents at work is the 'Inmate Accident Compensation System' as set forth in Title 18, United States Code, Section 4126 and 28 Code of Federal Regulations, Part 301. See (Attached Document Exhibit "A" and Complaint ¶ 27).

Smith submitted his claim before the 'Inmate Accident Compensation Systems - Claims Examiner', on May 11, 2000. See (Attached Copy of Document Exhibit "A1"). After not receiving treatments that were recommended, Smith filed a second Tort Claim in the Regional Office, and alleged that he was not being provided with treatments for his lower back problems by medical staff at both Correctional Institutions, during his entire course of incarceration. He explained in his complaint that prison officials had breached its duty - which is the proximate cause of his pain and suffering. Moreover, he asserted that he did not receive the recommended treatments ordered by Dr. Ronald M. Krasnick MD., whom submitted his findings and report to prison officials on September 22, 1999. See (Attached Exhibit "E" Medical Report).

Smith also contended that he had been forced to work, by prison officials whom were aware that he is legally disable, and receives a disability grant from the Social Security Administration. See (Attached Document Exhibit "C").

Smith's second claim filed was denied on January 26, 2001, and he was instructed to file his complaint in the United States District Court within (6) months of the date of the regional director's memorandum. See (Attached Exhibit "D").

Smith's complaint states the "United States of America", is responsible for ("BOP") employee's and owed duty of care to prisoner's which the statute specifically requires Bureau of Prisons to provide for safekeeping, care, subsistence and protection of all prisoner's under there custody. (citing 18 U.S.C.A. § 4042(a)(2,3)).

Moverover, it is the responsibility of prison medical staff to communicate prisoner's health problems with other prison staff personal before work assignments are to be given to reduce risk of further harm to inmates health. This was not done in the case before the bar. Because prison officials required Smith to work within the Correctional Institution, forcing him to work while he is legally disabled, caused Smith's further aggravating pain and discomfort to his lower back and legs. Smith has been working before the injury dated on December 10, 1998.

Smith's progress report from his [Unit Team] indicates that it was recommended by prison staff that Smith be assigned a job, to pay his court imposed fine. Thus, prison officials totally disregarded Smith's medical condition and was negligent.

Smith has been on disbility since 1992, wherein disability for the purpose of entitlement is disabled workers benefits due to the inability to engage in any "Substantial gainful activity (SGA)

by reason of any medically determination physical or mental impairment which can be expected to result in death, or which has lasted for a continuous period of more than 12 months. See (Attached Document Exhibit "C"). The determination of disability is done by the Social Security Administration and must be based upon all facts in an individual's case. Hence, medical evidence is necessary for this determination and may be sufficient to establish that a person is, or is not, disabled for the purposes of receiving any type of disability benefits, or for establishing a period of disability.

Here, Plaintiff's medical condition dates back to 1984, wherein medical doctors have indicated during 1994, that he is legally disabled due to his injuries sustained from 1984 thru 1993.

Prison officials have copies of Smith's medical records as they have affirmed, to include hospital records, public and private medical records, military medical records, clinical findings, laboratory findings, diagnosis, and prescribed treatments, as well as the prognosis. Yet, these factors were ignored by prison officials named in the complaint's which caused further pain and suffering.

Smith's complaint is also similar to Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251, where the Supreme Court concluded that "even if a prisoner would suffer no physical injury from a delay in providing medical treatment, a "serious medical need" might be implicated if the prisoner is experiencing pain which could be alleviated through prompt medical attention".

Smith asserts that medical staff treated his high blood pressure, heart problems and depression, but his complaint is solely based upon the lack of diagnosis and inadequate treatment of his lower back condition. Furthermore, the pain medication given by medical staff was ineffective, because Smith has informed medical staff that he was unable to take Ibuprofen, 600 mg. tablets, and Flexeril, 10mg tablets because he was given this pain medication for years and it was causing stomach irritation.

Smith also disputes the statements made by Dr. Toa G. Chaw MD., whom of course will say that Smith received adequate treatments because he is employed by the ["BOP"]. It can not be expected that he would say otherwise. The [MRI] reports taken in 1988 and the recent [MRI] report taken in 2001, clearly shows that Smith's lower back condition has in fact worsen. See (Attached Documents Exhibits "F", "G", "H").

These [MRI] reports indicate that Smith's lower back condition is further deteriorating, also due to his not being able to obtain the proper rest while at the Federal Prison Camp - in Allenwood. The prison staff is well aware of his condition, and yet, still requires him to work within an institution job. Thus, he had no choice but to bring this to the attention of the United States District Court in said complaint now presently pending. This conduct on behalf of prison officials is improper. See Yosuf v. United States, 642 F. Supp.2d 145 (M.D. Pa 1986)(Bureau of Prison breached duty to injured prisoner by failing to give him adequate pain medication).

SUMMARY JUDGMENT STANDARDS

Summary judgment is appropriate if the pleading, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c); accord Anderson v. Liberty Lobby, Inc., 477 U.S. 242 247, 106 S.Ct. 2505, 91 L. Ed.2d 202 (1986); Vitkus v. Beatrice Co., 11 F.3d 1535, 1538-39 (10th Cir. 1993). A factual dispute is material only if it might affect the outcome of the suit under the governing law. Anderson, 477 U.S. at 248, 106 S.Ct. 2505.

The moving party bears the initial burden of showing the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Hicks v. City of Watonga, 942 F.2d 737, 743 (10th Cir. 1991). Once the moving party meets its burden, the burden shifts to the non-moving party to demonstrate that genuine issues remain for trial as to those dispositive matters for which it carries the burden of proof. See Spurlock v. Simmons, 88 F.Supp.2d 1191 (D. Kan. 2000); Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

The non-moving party may not rest on its pleadings but must set forth specific facts. Applied Genetics, 912 F.2d at 1241, and the court must view the record in a light most favorable to the parties opposing the motion for summary judgment. Jones v. United States, 91 F.3d 623 (3rd Cir. 1996).

Smith has submitted medical reports before the court, which are conflicting evidence with defendants position. Thus, the medical evidence should be treated like an affidavit, and it is respectfully submitted that the court is not authorized to accept the factual findings of prison investigation when the Plaintiff has presented conflicting evidence and where the admissions and discovery has yet to be filed. (citing Hall v. Bellmon, 935 F.2d 1106, 1111 (10th Cir. 1978)).

Smith's pro se complaint, when sworn and made under penalty of perjury, is also treated as an affidavit and, like the medical reports, serves as evidence for a summary judgment determination. Smith asserted that he was not provided with the recommended treatments ordered by Dr. Ronald M. Krasnick MD., while at [FCI Fort Dix] and [Allenwood Federal Prison Camp], thus, this factor will be revealed after the court orders discovery and admissions in this litigation. At present, there has not been either requested by the Honorable Court. The moving party should be made to answer to interrogatories and admissions as a matter of law, before summary judgment or, a dismissal be granted by the court. However, Plaintiff is confident that the designed specific facts showing that there is existing issues for trial will exist in this case.

In addition, Plaintiff is well aware of the enactment of the Prison Litigation Reform Act ("PLRA"), that a prisoners' good time credits may be revoked for filing a claim the Court determines is malicious, is solely to harass the defendant, or if the prisoner

testifies falsely or presents false evidence. See 28 U.S.C. § 1932 (Supp. II 1996.

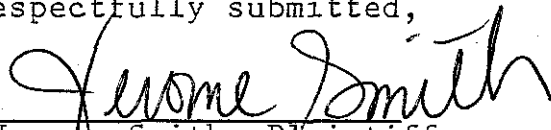
Plaintiff contends that he was lefted without a choice other than to bring these stated issues before the Honorable Court for the violations of his Civil Rights.

III. CONCLUSION

WHEREFORE, for the reasons stated above, Plaintiff's pray that this Court, will not grant defendant's motion for summary judgment, and or, in the alternative, dismiss the complaint where the admissions and discovery have yet to be filed.

Dated: September 19, 2001

Respectfully submitted,



Jerome Smith, Plaintiff
Reg No. 19145-018
Allenwood Federal Prison Camp
Dorm C
P.O. Box 1000
Montgomery, Pa 17752

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JEROME SMITH :
Plaintiff : CIVIL CASE No. 1:CV-01-1026
v. : (Judge Rambo)
UNITED STATES OF AMERICA : (Mag. Judge Smyser)
Defendant. :
oOo

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that he is an inmate at Allenwood Federal Prison Camp, Montgomery, Pennsylvania.

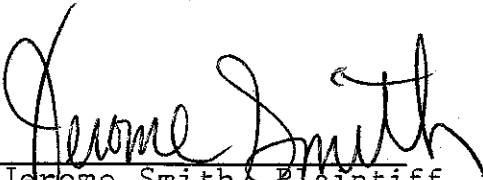
That this 21st day of September, 2001, he served a copy of the attached

**BRIEF IN OPPOSITION TO DEFENDANT'S MOTION
TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

By placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Allenwood Federal Prison Camp, Montgomery, Pennsylvania.

ADDRESSEE:

Mark E. Morrison Esq.
United States Attorney
228 Walnut Street, 2nd Fl
P.O. Box 11754
Harrisburg, Pa 17108-1754


Jerome Smith, Plaintiff
Allenwood Federal Prison Camp
Dorm C Reg No. 19145-018
P.O. Box 1000
Montgomery, Pa 17752

E X H I B I T S



EXHIBIT "A"

U. S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Customs House - 7th Floor
2nd and Chestnut Streets
Philadelphia, PA 19106

February 28, 2000

Jerome Smith
Reg. No. 19145-018
Federal Correctional Institution
P.O. Box 38
Fort Dix, NJ 08640

Re: Administrative Tort Claim Dated February 1, 2000
Claim No. TRT-NER-2000-00454

Dear Mr. Smith

This letter is in response to your administrative tort claim in which you seek compensation in the amount of \$100,000.00 for personal injuries you allegedly suffered on or about December 10, 1998. This claim was received in this office on February 10, 2000.

After further investigation this tort claim is being rejected because you are claiming an injury that occurred while at work, which is excluded from coverage under the Federal Tort Claims Act. The exclusive remedy for inmate accidents at work is the Inmate Accident Compensation System as set forth in Title 18, United States Code, Section 4126 and 28 Code of Federal Regulations, Part 301.

If you desire to file a claim under the Inmate Accident Compensation System, you should contact the Safety Manager at the institution where you were confined to acquire the proper forms. Under the provisions of 28 Code of Federal Regulations, Part 301.101, any claim for compensation should be submitted at or near the time of release from confinement, to the Claims Examiner, Inmate Accident Compensation System, Federal Prison Industries, Inc., Washington, D.C. 20534.

Sincerely,

D. Kostyk

Henry J. Sadewski
Regional Counsel

EXHIBIT "A1"

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Received by (Please Print Clearly) <i>STAPP</i></p> <p>C. Signature <i>[Signature]</i></p>	<p>B. Date of Delivery <i>5/11/01</i></p> <p>D. Agent <input checked="" type="checkbox"/> Addressee <input type="checkbox"/></p>
<p>1. Article Addressed to:</p> <p>CLAIMS EXAMINER INMATE ACCIDENT COMPENSATION SYSTEMS FEDERAL PRISONS INDUSTRIES WASHINGTON, D.C. 20534 Attn Claims Examiner</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>2. Article Number (Copy from service label)</p> <p>Z 564 287 874</p>			
<p>PS Form 3811, July 1999</p>		<p>Domestic Return Receipt <i>564 287 874</i> 102595-99-M-1789</p>	

EXHIBIT "B"

CLAIM FOR DAMAGE,
INJURY, OR DEATH

INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

FORM APPROVED
OMB NO.
1105-0008
EXPIRES 4-30-88

1. Submit To Appropriate Federal Agency:

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
NORTHEAST REGIONAL OFFICE
2nd Chestnut Street - Phila, Pa 191062. Name, Address of claimant and claimant's personal representative, if any.
(See instructions on reverse.) (Number, street, city, State and Zip Code)Jerome Smith # 19145-018
FPC Allenwood Dorm A-A
P.O. Box 1000
Montgomery, Penna 177523. TYPE OF EMPLOYMENT
☐ MILITARY ☒ CIVILIAN4. DATE OF BIRTH
04/09/19585. MARITAL STATUS
Single6. DATE AND DAY OF ACCIDENT
December 10, 19987. TIME (A.M. OR P.M.)
10:30 AM

8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.)

Basis of Claim: Breach of Duty on behalf of medical staff personnel at FCI Fort Dix, New Jersey; and FPC Allenwood which is the proximate cause of the Plaintiff's injuries. In addition, medical staff personnel has shown "deliberate indifference" to plaintiff's medical needs as was prescribed, by Doctor Ronald M. Krasnick, MD on September 22, 1999, at FCI Fort Dix, New Jersey. (See Attach Medical Report) dated 09-22-1999.

Medical staff personnel at FPC Allenwood are showing the same conduct towards the Plaintiff's medical needs at this present date 08-03-2000. Therefore, the increase serious risk is being manifested by prison doctors.

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code)

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.)

10. PERSONAL INJURY/WRONGFUL DEATH

STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.

Greatly Aggravated Pain, Weakness, Limitation of Motion, Impairment of Natural Function which results in permanent injury in which, Plaintiff is presently experiencing pain and suffering with mental anguish and great agony since the date of the injury 12-10-98.

WITNESSES

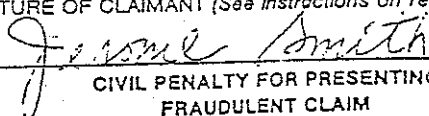
NAME	ADDRESS (Number, street, city, State, and Zip Code)
Ms N. Brown Accountant Dr. Ronald Krasnick, MD	F.C.I. Fort Dix, New Jersey 08640 P.O. Box 200 Rancocas Orthopedic Associates (See Attach) Sheet

AMOUNT OF CLAIM (In dollars)

12. (See instructions on reverse)			
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY \$500,000	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$500,000

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM

13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.)


13b. Phone number of signatory
N/A14. DATE OF CLAIM
08-03-2000CIVIL PENALTY FOR PRESENTING
FRAUDULENT CLAIM

The claimant shall forfeit and pay to the United States the sum of \$2,000. plus double the amount of damages sustained by the United States.
(See 31 U.S.C. 3729.)

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT
CLAIM OR MAKING FALSE STATEMENTS

Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)

EXHIBIT "C"

Social Security Benefit Information

From: SOCIAL SECURITY ADMINISTRATION

Date: September 19, 2000

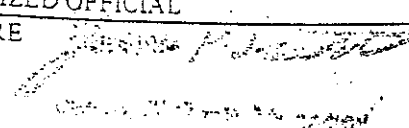
JEROME SMITH
#19145-018
PO BOX 1000
MONTGOMERY PA 17752

Telephone No.: 1-800-772-1213

Information about a person's Social Security benefits is confidential by law. Except under certain circumstances specified by law and regulations, the Social Security Administration does not reveal such information to any person except the beneficiary involved, or his or her authorized representative.

Attached is the information you requested about your benefits. The attachment is an official record of your Social Security and/or supplemental security income benefits as of the date of this letter. You may use the attached information for proof of benefits.

If you have any questions concerning this official record, please contact your local Social Security Office.

SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL	
TITLE	SIGNATURE
District Manager	
SOCIAL SECURITY OFFICE ADDRESS	

240 W. Third St.

TPQY DTE:09/19/00 SSN:165-52-3952 DOC:215 UNIT:T PG: 001
STATUS MBR YES LOU-09/19 SSACCS NO LOU-09/18 SSR YES LOU-02/07/92
INPUT SOCIAL SECURITY NUMBER 165-52-3952 NAME J SMITH

USER CODE T

TPQY CONFIDENTIAL SOCIAL SECURITY DATA - CLAIM NUMBER 165-52-3952A

INDIVIDUALS OWN SOCIAL SECURITY NUMBER: 165-52-3952

JEROME SMITH MALE BORN:04/09/58 ENTITLED:05/1992

JEROME SMITH 626 MCKEAN ST PHILADELPHIA PA 19148

PAYMENT STATUS CODE: S7-BENEFITS SUSPENDED IN 09/96

NET MONTHLY BENEFIT IF PAYABLE: \$552.00

MEDICARE DATA ENTITLED

HOSPITAL INSURANCE 05/1994

DATE DISABILITY BEGAN: 11/1991

INPUT SOCIAL SECURITY NUMBER 165-52-3952 NAME J SMITH

USER CODE T

TPQY CONFIDENTIAL SUPPLEMENTAL SECURITY INCOME DATA ON 165-52-3952

JEROME SMITH MALE BORN:04/09/58 ELIGIBLE:02/1992

APPLICATION DATE: 02/04/1992 TYPE OF PERSON: DISABLED INDIVIDUAL

MAILING ADDRESS:

JEROME SMITH 521 DUDLEY ST PHILA PA 19148

PAYMENT STATUS CODE: T51 - PYMTS NEVER MADE - TERMINATED

EFFECTIVE 11/1994



EXHIBIT "D"

U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

*U.S. Custom House - 7th Floor
2nd & Chestnut Streets
Philadelphia, PA. 19106*

August 11, 2000

Jerome Smith, Register No. 19145-018
FPC Allenwood
P.O. Box 1000
Montgomery, PA 17752

Re: Administrative Tort Claim Dated August 3, 2000
Claim No. TRT-NER-2000-02253

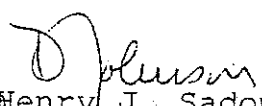
Dear Mr. Smith:

This will acknowledge receipt on August 7, 2000, of your administrative tort claim for alleged personal injury suffered at FCI Fort Dix, on or about December 10, 1998.

Under the provisions of the Federal Tort Claims Act, 28 U.S.C. 2675, we have six months from the date of receipt to review, consider, and adjudicate your claim. Accordingly, you may expect to hear from us on or before February 3, 2001.

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 801, US Custom House, 2nd & Chestnut Street, Philadelphia, Pennsylvania 19106. If you have any questions about the status of your claim or if the circumstances surrounding this claim change in any fashion, you should contact me immediately. Also, should your address change, you should advise me accordingly.

Sincerely,


Henry J. Sadowski
Regional Counsel

cc: File

UNITED STATES GOVERNMENT

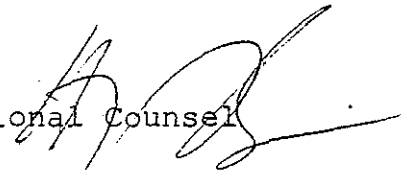
Memorandum

EXHIBIT "D"

Northeast Regional Office, Philadelphia, PA
FEDERAL BUREAU OF PRISONS

DATE: January 26, 2001

REPLY TO

ATTN OF: Henry J. Sadowski, Regional Counsel 

SUBJECT: Your Administrative Tort Claim, No. TRT-NER-2000-02253

to: Jerome Smith, Reg. No. 19145-018
FPC Allenwood

Your Administrative Tort Claim No. TRT-NER-2000-02253, dated August 3, 2000, and properly received in this agency on August 7, 2000, has been considered for settlement as provided by the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2672, under authority delegated to me by 28 C.F.R. § 543.30. You seek \$500,000.00 in compensatory damages for an alleged personal injury. Specifically, you claim medical staff at the Federal Correctional Institution (FCI), Fort Dix, New Jersey, and the Federal Prison Camp (FPC), Allenwood, Pennsylvania, demonstrated deliberate indifference toward your medical needs, resulting in permanent injury, pain and mental anguish. You assert that this painful injury occurred on December 10, 1998, while you were working in UNICOR.

After careful review of this claim, I have decided not to offer a settlement. Investigation reveals that you came into custody with the Federal Bureau of Prisons with an existing back injury which occurred in 1984. This injury, according to medical records available, resulted in a herniated disc. Medical records indicate that you reported a fall at work on December 10, 1998, however, there is no indication that this resulted in any further injury to your back. You were evaluated by orthopedic consultants at FCI Fort Dix and FPC Allenwood. It was the opinion of the orthopedic consultants, until recently, that your treatment would be managed without surgery. Your condition has recently demonstrated a need for surgical repair. However, on January 16, 2001, you refused to go to the appointment made for you with the neurosurgeon. You are now expressing concerns about undergoing surgery. You fail to show that negligence on the part of any Bureau of Prisons' employee has resulted in your alleged personal injury.

Accordingly, your claim is denied. If you are dissatisfied with this decision, you may seek reconsideration by this office or bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this memorandum.

cc: Nancy Bailey, Warden, FCI Fort Dix
Jonathan C. Miner, Warden, FPC Allenwood

Rancocas Orthopedic Associates

EXHIBIT "E"

Rancocas Medical Arts Bldg.
220 Sunset Road
Suite 3A
Willingboro, NJ 08046
(609) 871-5900
FAX (609) 871-9301

1288 Route 73 South
Suite 100
Mt. Laurel, NJ 08054
(856) 914-1111
FAX (609) 871-9301

Irving P. Ratner, M.D.
Spine Surgery
Foot and Ankle Surgery

Ronald M. Krasnick, M.D.
Joint Replacement
Arthroscopic Surgery

Bruce W. Wulfsberg, M.D.
Trauma & Reconstructive
Sports Medicine

Andrew B. Sattel, M.D.
Hand and Upper Extremity

September 22, 1999

FCI
P.O. Box 38
Fort Dix, NJ 08640

RE: SMITH, Jerome

#19145-018

Mr. Smith had an MRI performed on August 24, 1999. This study is grossly abnormal. The L4-5 disc is bulging centrally. This is causing central canal stenosis and bilateral neuroforaminal stenosis. At L5-S1, he has a herniated disc on the right deforming the thecal sac and also impinging on the right S1 nerve root.

Diagnosis: Lumbar disc disease at L4-5 and L5-S1.

Recommendation: At this point in time, he should be evaluated by Dr. Ratner in terms of whether or not more aggressive management may be necessary.



RONALD M. KRASNICK, MD

/pwp-s
cc: Irving Ratner, MD

Addendum: Clinically Mr. Smith is unchanged subjectively and objectively. Ramifications associated with this were discussed in detail. He will be scheduled for evaluation independently by Dr. Ratner and will bring the current MRI films of August 24, 1999 with him for evaluation.

HTB 11/15/99
H. Jones MD



Exhibit "F"

South Philadelphia
Radiologic Center
1709-Medical Center
1709-South Broad St.
Phila. PA 19148
(215) 271-2000

November 3, 1988

Dr. J. Levyn
724 Porter Street
Philadelphia, PA 19148

RE: SMITH, JEROME #23952

DOB: 4-9-58

Dear Dr. Levyn:

The following are the results of the examination performed on November 1, 1988.

STUDY: MRI LUMBAR

COMMENT: An MRI scan of the lumbar spine was performed. Sagittal and axial views were obtained.

The study is abnormal.

At L 4-5, there is a moderate size central herniation of the disc which is only compressing the anterior epidural fat and does not compress the thecal sac or nerve roots laterally.

At L 5-S 1, there is some loss of water content of the disc. There is a small central protrusion of the disc which is only causing minimal impingement on the epidural fat without causing compression of the thecal sac or nerve roots.

The other disc levels are normal. The bones and facet joints are normal.

IMPRESSION: There is a moderate size central herniation of the L 4-5 disc not compressing the thecal sac. A small central protrusion of the L 5-S 1 disc is present as well.

Thank you for the opportunity of examining this patient.

Sincerely,

Exhibit "G"



Orange Radiology Associates, P.C.

MRI of Newburgh

320 Robinson Avenue
Newburgh, NY 12550

(914) 565-3664 Fax (914) 565-3617

MRI of Orange

505 Route 208
Monroe, New York 10950

(914) 783-3444 Fax (914) 783-9561

MRI of Port Jervis

at Mercy Community Hospital
Port Jervis, NY 12771

(914) 858-5265 Fax (914) 858-5657

X-RAY • CT • US • MAMMOGRAPHY • OSTEOPOROSIS EVALUATION • MRI

Dr. Sleavin - Clinical Director
Health Services - FCI Ft. Dix
Box 5000
Fort Dix, New Jersey 08640

August 24, 1999

RE: Jerome Smith
DOB: 4-9-58
ID #19145-018
MRI of the Lumbar Spine
8-17-99

Dear Dr. Sleavin:

Thank you for referring this patient for the above examination.

MRI OF THE LUMBAR SPINE:

Sagittal T1 and T2 weighted sequences as well as axial gradient echo and T2 weighted sequences are being evaluated.

The vertebral body height and intervertebral disc space height is well maintained at all levels. Degenerative disc disease is seen at the L4-L5 and L5-S1 levels, which is manifested by disc desiccation.

At the L4-L5 level there is broad based disc bulging as well as mild facet overgrowth and ligamentum flavum hypertrophy. These findings in concert are causing mild central canal stenosis as well as bilateral neural foraminal stenosis.

At the L5-S1 level there is a right paracentral-right lateral recess disc herniation, which is causing deformity of the right ventral lateral aspect of the thecal sac as well as mild right neural foraminal stenosis. The conus medularis is situated behind the T12-L1 level and is normal. The paraspinal soft tissues are also normal.

IMPRESSION:

At the L4-L5 level there is degenerative disc disease and broad based disc bulging. In addition, there is facet overgrowth and ligamentum flavum hypertrophy. These findings in concert are causing mild central canal stenosis and bilateral neural foraminal stenosis. At the L5-S1 level there is a right paracentral-right lateral recess disc herniation, which is causing deformity of the ventral thecal sac and possible impingement upon the descending right S1 nerve root. There is also partial compromise of the right neural foramen.

Sincerely,

Robert Greco, M.D.
Harvey M. Peck, M.D.

RG-HMP:jm

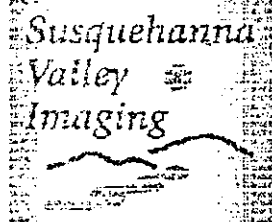
Exhibit # 12

A. VALENTI, M.D.
MEDICAL CLINIC
FCI FT. DIX

12/20/00 02:58 PM EST

VIA VSI-FAX

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19145-018

EXHIBIT "H"

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PATIENT NAME
JEROME SMITH

ACCOUNT NO
78474

SSN
165-52-3952

AT THE REQUEST OF
LEON BIGLETE MD
FPC ALLENWOOD
P O BOX 1000
MONTGOMERY PA 17752

DATE OF BIRTH
04/09/1958

AGE/SEX
42/M

DATE OF SERVICE
12/20/2000

12/20/2000: 072148 MRI L-SPINE

HISTORY: 42 year old male with low back pain. Patient had history of fall in 1984. Patient reports a known HNP at L4-5.

TECHNIQUE: SCOUT
SAGITTAL: T1, T2
TRANSVERSE: T2, T1, CISS

Leon T. Biglete, MD
Medical Officer

COMMENTS: There are no prior studies available for comparison.

The lumbar spine is in anatomic alignment. There is normal signal intensity within the marrow spaces. The vertebral body heights are well maintained. The conus medullaris is normal in appearance and position. There is moderate decreased hydration of the L4-5 and L5-S1 disc spaces consistent with degenerative change. The remainder of the disc spaces are well hydrated.

The T12-L1, L1-2, and L2-3 disc spaces are normal.

L3-4: There is mild to moderate degenerative hypertrophy of the facets and ligaments of in flavum, but without evidence of significant compromise of the spinal canal or neural foramen.

L4-5: There is a mild concentric disc bulge present. There is a small right posterior broad based HNP superimposed upon this disc bulge. There is also mild to moderate degenerative hypertrophy of the facets and ligament in flavum. The combination of the disc processes and the facet arthropathy is producing a mild central spinal stenosis as well as moderate narrowing of the right lateral recess and mild narrowing of the left lateral recess. There is mild inferior neural foraminal narrowing bilaterally, but without evidence of high grade encroachment upon the L4 nerve roots.

L5-S1: There is a small to moderate broad based right posterior/right foraminal HNP. This HNP is largely responsible for a moderate stenosis of the right lateral recess at this level. There is no significant degree of central stenosis or narrowing to the left lateral recess. There is some inferior neural foraminal narrowing seen bilaterally, but without evidence of significant encroachment upon the L5 nerve roots.

Patient: JEROME SMITH
 Soc. Sec. #: 165-52-3952
 D.O.B.: 04/09/1958
 Account #: 78474

Continued: Page 2 of 2

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DIAGNOSIS:

1. Mild central stenosis and bilateral lateral recess stenosis (right greater than left) at L4-5 due to a combination of a disc bulge, broad based small HNP, and facet arthropathy.
2. Broad based right posterior/foraminal HNP at L5-S1.

ELECTRONICALLY SIGNED

Scott W. Wise, M.D.

SWW/ra